

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**In Re:**

July 28, 1997

**Universal Service Generic  
Contested Case**

**Docket No.  
97-00888**

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SECRETARY

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**HEARING OFFICER'S NOTICE OF PROPOSED SCHEDULE  
AND REQUEST FOR COMMENTS**

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**INTRODUCTION**

On June 13, 1997, the Hearing Officer issued a Notice of Contested Case and Hearing Officer Request in the above captioned Docket. A pre-hearing is scheduled for July 28, 1997 for this Docket for preliminary matters. The Hearing Officer has reviewed the initial comments of the parties that were filed July 9, 1997.<sup>1</sup>

The Hearing Officer recognizes that many issues will need to be resolved in this Docket and that numerous participants will be interested and desire to participate. Additionally, given the time-table mandated under the Telecommunications Act of 1996

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<sup>1</sup> The following parties submitted comments and expressed an intent to fully participate: AT&T Communications, BellSouth Cellular Corp, BellSouth Telecommunications, Inc., Ben Lomand Rural Telephone Cooperative, Citizens Local Exchange Carriers, Coalition of Small LECs and Cooperatives, Consumer Advocate Division, Dekalb Telephone Cooperative, Inc., Electric Power Board of Chattanooga, GTE Mobilnet, MCI Telecommunications Corp., Nextlink Tennessee, North Central Telephone Cooperative, Time Warner Communications of the Mid-South, Twin Lakes Telephone Co., United Telephone-Southeast and Sprint Communications L.P., West Kentucky Rural Telephone Cooperative Corp, and Yorkville Telephone Cooperative.

The following parties plan to only monitor the proceeding: Deltacom, Inc., Phoenix Network, Inc., Standard Communications Co., 360 Communications Company, WorldCom, Inc., AVR L.P. d/b/a Hyperion of TN L.P., LCI International Telecom Corp., TN Department of Finance and Administration, TN Department of Education and Charlene Taylor (Chaz Taylor, Inc.)

The following parties anticipate no involvement: D.D.D. Calling, Inc. and RRV Enterprises, Inc.,

("Telco Act") and Federal Communications Commission's ("FCC") Report and Order in Docket No. 96-45, the Tennessee Regulatory Authority ("TRA") will need to proceed in a fairly expedient manner. Therefore, the Hearing Officer is issuing this Notice of Proposed Schedule and Requests for Comments. The parties should submit comments on the proposed schedule and issues by August 21, 1997 and may file reply comments by September 2, 1997. In order for all participants to have an opportunity to reply on comments filed, participants filing comments shall serve the other participants according to the Authority's service list.

When parties respond to the request for comments, the Hearing Officer requests that they key their response to the heading and issue listed in the Notice. This procedure will allow the reviewing parties to ascertain more clearly which issue is being addressed.

Below are listed questions or issues, proposals for comments, and requests for proposals on issues. The TRA is seeking answers, responses to the proposals, and in some instances specifically requesting proposals.<sup>2</sup> The parties in responding to this notice, should let the TRA know of their position on the questions, proposals and request for proposals. Through this process, the TRA is seeking to resolve some issues that could either be presented in a partial settlement or considered in a draft order. Additionally, through this process, the TRA is seeking to narrow those issues that may need to be litigated before the Authority.

## **PRELIMINARY ISSUES**

### **A. Cost Model Issue:**

As stated above, the TRA must notify the FCC by August 15, 1997, if the TRA decides to develop its own cost study. At the August 5, 1997 TRA Conference, the Directors will consider whether Tennessee should develop its own cost study for Universal Service, or work with the FCC to develop a model suitable for Tennessee. The TRA Staff expects to recommend working with the FCC on a forward looking cost model suitable to Tennessee.

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<sup>2</sup> In those instances where there is listed a proposal to resolve an issue, parties are free to offer counter-proposals.

In the initial comments filed July 9, 1997, some parties commented on this issue.<sup>3</sup> The Directors would like to allow the parties an opportunity to comment on this issue prior to the August 5, 1997 Conference. Therefore, the Hearing Officer is requesting that interested parties respond in writing on this issue by August 1, 1997.

**B. Proposed Phase 1 & Phase 2 of Issues:**

It has been proposed that Universal Service be processed in two phases. Phase 1 would involve all issues not requiring cost and revenue comparisons. Phase 2 would involve the computation of Universal Service costs and determination of explicit and implicit subsidies. Under this two phase approach, if Access Charge was consolidated with Universal Service, Access Charge Reform would be considered during Phase 2. Parties are welcome to comment on the proposed separation of issues.

**C. Proposed Schedule**

Attached to this request is a proposed schedule for Phase 1 and Phase 2 to be utilized in this docket. Parties may comment on the proposed schedule.

**D. Consolidation:**

Some potential participants, in their initial comments, suggested that the Universal Service Docket No. 97-00888 should be consolidated with the Access Charge Reform Docket No. 97-00889. Please comment on whether consolidation should be considered.

**E. Regulations Contemplated:**

Do the participants in this docket contemplate, that ultimately, the findings of the TRA regarding Universal Service will need to be incorporated in rules and regulations of the TRA?

**F. Non-rural and Rural Carriers:**

Pursuant to the FCC Order 97-157, rural carriers will not see changes in Universal Service support before January 1, 2001 (Paragraph 204 of the Order). There is a Joint Board being formed at the FCC level to address the issues unique to rural carriers. Therefore, should there be a bifurcation of the non-rural and rural Universal Services issues and leaving the rural Universal Service issues to be considered at a later date? Please comment on this proposal.

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<sup>3</sup> For instance, BellSouth Telecommunications, Inc. commented that the Benchmark Cost Proxy Model and the Hatfield Model, as presently designed, would not provide enough cost information.

## **G. Legal Framework:**

Below is a request for comments on the definition of Universal Service. If the parties foresee that additional legal issues need to be resolved, please submit those issues along with your position on those issues with your comments.

### **ISSUES FOR CONSIDERATION**

#### **IV. Definition of Universal Service:<sup>4/5</sup>**

Under Tennessee law, Universal Service is defined in Tenn. Code Ann. § 65-5-207 (a). The Telco Act section 254 (c) defines Universal Service.

Under section 254 (f), the Act provides a State may adopt regulations "not inconsistent with the Commission's rules to preserve and advance universal service."

**A. ISSUE:** Is Tennessee's definition under Tenn. Code Ann. § 65-5-207 (a), consistent with the Federal Act's definition of Universal Service? If not, is Tennessee's definition preempted by the Federal Act?

**B. ISSUE:** Should the TRA recommend to the Tennessee legislature that they adopt the Federal definition of Universal Service?

**C. ISSUE:** Whether the Federal or Tennessee definition of Universal Service or some combination of both is followed, what services should be provided?

**D. ISSUE:** Should the TRA provide for additional support under a Tennessee mechanism, for services in addition to those set forth by the FCC?

**E. ISSUE:** Should the TRA adopt specific procedures for passing upon "exceptional circumstances" as set forth in paragraphs 89-92 of the FCC order?

**F. ISSUE:** Are there any telephone companies that will not be able to offer all the elements of Universal Service by the end of 1998? (e.g. toll blocking) If this is a problem, what steps are needed to remedy the situation?

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<sup>4</sup> The Roman Numeral headings used in this Request for Comments are tied to the Report and Order issued In the Matter of Federal-State Joint Board on Universal Service, Docket No. 96-45.

<sup>5</sup> Many of the questions and concerns listed in this request come from the comments and suggestion made by the parties in their filings made July 9, 1997. The TRA appreciates their time and effort and looks forward to receiving additional informative comments as the TRA proceeds with this docket.

## **V. Affordability:**

### **A. Define and consider affordability of rates:**

Section 254 (b)(1) of the Telco Act provides that, "quality services should be available at just, reasonable, and affordable rates." The definition of affordability contains both an absolute component "to have enough or the means for", which takes into account an individual's means to subscribe to Universal Service; and a relative component "to bear the cost of without serious detriment", which takes into account whether consumers are spending a disproportionate amount of their income on telephone service.

**1. ISSUE:** Provided that existing rates were set to the "just and reasonable" standard pursuant to Tenn. Code Ann. § 65-5-201, is there an assumption that current rates are set at an affordable level?

**2. ISSUE:** Does the existence of programs to support low income consumers, further the argument that current rates meet the affordability requirement in Tennessee?

**3. ISSUE:** Are there other factors that should be considered?

**B. ISSUE:** The FCC did not choose to adopt a nationwide rate for Universal Service. Should Tennessee adopt a statewide universal rate?

**C. ISSUE:** Define explicit subsidy.

**PROPOSAL FOR COMMENT:** Explicit subsidy is a support that is calculable and identifiable vs. implicit subsidy which generally means there is a support but the exact amount of that support has not been determined. Is there a more appropriate definition?

**D. ISSUE:** How may complaints filed on the affordability of intrastate rates be addressed?

**PROPOSAL REQUESTED:** The FCC identifies several components to be considered when determining affordability of rates, such as subscribership levels, size of local calling area, consumer income level, cost of living, etc. What procedures would be least burdensome on carriers and the TRA, and would provide the information necessary to determine if rates are affordable on an ongoing basis?

## **VI. Carriers Eligible for Universal Service Support**

**A. ISSUE:** Define carrier of last resort.

**PROPOSAL FOR COMMENT:** The Staff defines carrier of last resort as the carrier ultimately responsible for the provision of telephone service including the provision of Universal Service core elements in a given area. Is there a better definition?

**B. ISSUE:** Determine if a carrier of last resort designation is necessary.

**PROPOSAL FOR COMMENT:** The designation of a carrier of last resort for a given region is necessary to ensure that all Tennessee consumers are provided with telecommunication services. If no carrier of last resort is designated there is the potential danger of some consumers not being served. At what point, if any, would carrier of last resort designation become unnecessary?

**C. ISSUE:** What mechanism should be put in place if a carrier proposes to withdraw service?

**PROPOSAL FOR COMMENT:** It appears that mechanisms need to be developed to address the possibility that a carrier of last resort may desire to withdraw service in one or all regions which it serves. Allowing a carrier of last resort to withdraw needs to be based on specific and predictable criteria. At a minimum, the Staff proposes that no carrier of last resort should be allowed to withdraw service prior to the designation of another carrier to serve as the carrier of last resort. Do you have any suggestions on the criteria that needs to be established in order to allow a carrier to withdraw as carrier of last resort?

**D. ISSUE:** What criteria should be used to designate eligible telecommunication carriers?

**PROPOSAL FOR COMMENT:** The FCC concluded that the plain language of section 214(e) precludes adoption of additional eligibility criteria beyond those enumerated in that section. Therefore, the FCC adopted without expansion the statutory criteria set out in section 214(e), as the rules governing eligibility. The Staff proposes to use the eligibility criteria of section 214(e) to designate eligible telecommunication carriers. Do you agree with this proposal?

**E. ISSUE:** Should Universal Service support be provided to cellular carriers and resellers.

**PROPOSAL FOR COMMENT:** The FCC adopted without expansion the statutory criteria set out in section 214(e) as the rules governing eligibility. The FCC interpreted the term "facilities" in section 214(e)(1) to mean any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 254(c)(1). The FCC further concluded that a carrier that offers any of the services designated for Universal Service support, either in whole or in part, over facilities obtained as unbundled network elements pursuant to section 251(c)(3) satisfies the "own facilities" requirement of section 214(e). The staff

recommends that the TRA use the criteria set forth by the FCC and to the extent that cellular carriers or resellers meet these criteria, they should be provided Universal Service support. Do you agree with this recommendation?

**F. ISSUE:** What is the appropriate role of cooperatives in this proceeding?

**PROPOSAL FOR COMMENT:** Section 254(f) states, "Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on a equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of Universal Service in that State." It is clear that cooperatives will contribute to and receive support from the Universal Service support fund. Because the cooperatives will be included in the results of this proceeding, the Staff believes that cooperatives should be encouraged to participate fully in the Universal Service docket. Do you agree?

## **VII. High Cost Support**

**A. ISSUE:** Should Tennessee perform its own forward looking cost study to determine intrastate Universal Service support? If not, should it work in conjunction with the FCC to determine methodology and inputs and adopt the FCC cost and revenue benchmark calculations? **Please note that comments on this issue are due August 1, 1997. Please see page 2, section A.**

**PROPOSAL FOR COMMENT:** As stated above, in "Preliminary Matters" the Directors of the TRA will consider the issue of whether Tennessee should develop its own cost study at the Conference scheduled for August 5, 1997. Therefore, if the parties desire to comment further on this issue, they should file those comments by August 1, 1997.

**B. ISSUE:** If it is determined that Tennessee will do a cost study what would be the core elements? (i.e. residential, business, usage).

1. What area should be included in each cost study?
2. The FCC requires diverging to the wire center serving area at least, and to smaller areas if feasible. Is this appropriate?

**PROPOSAL FOR COMMENT:** FCC Order 97-157 sections 54.101 and 54.207 set forth the services designated for support and service areas. Is it appropriate for Tennessee to adopt these services? If not, what services do you believe should receive Universal Service support. Also please comment on how service areas may be defined in Tennessee.

**C. ISSUE:** What elements should be included in the revenue benchmark?

**PROPOSAL FOR COMMENT:** The Staff expects to use the elements that will be included in the national benchmark, (local, discretionary, interstate and intrastate access

services, and other revenues used in the cost study). Do you feel these are the appropriate elements to be included in the benchmark?

### **VIII. Support for Low Income Consumers**

**A. ISSUE:** Define a process to address any waiver requests of carriers to the no-disconnect rule.

**PROPOSAL FOR COMMENT:** The no-disconnect rule would prohibit disconnection of local service for Lifeline customers for non payment of toll charges. Despite the benefits of a no-disconnect rule for Lifeline consumers, the FCC recognized that state utility regulators would have the ability to grant carriers a limited waiver of the requirement under limited special circumstances. The Staff suggests that the TRA adopt the three requirements of the FCC for granting a waiver request. What is your position?

The FCC is raising Lifeline support from \$3.50 to \$5.25. The FCC will match 1/2 of state support up to an additional \$1.75 which will provide for a maximum of \$7.00 federal support.

**B. ISSUE:** Determine if the current level of state discounts for Lifeline should be changed.

**PROPOSAL REQUESTED:** Currently, Tennessee provides \$3.50 per month support for Lifeline. At the state's current level of funding (\$3.50/month) the FCC will provide an additional \$7.00 in federal support for a total of \$10.50 in support. If this level of support is maintained, then procedures may be considered to prevent Lifeline customers from receiving 100% free service. For instances, should a minimum amount be charged to the Lifeline customer? Please comment.

Tennessee has the option of reducing its monthly support amount, which in turn would reduce the federal funding. Any reduction in Tennessee's current funding of \$3.50 will result in a Federal reduction of one half of the amount of the Tennessee reduction, down to the minimum Federal funding amount of \$5.25. For example, Tennessee funds \$1.00, Federal minimum funding \$5.25. Federal matching of 1/2 of state is \$.50. This would provide total support of \$6.75. Please comment.

**C. ISSUE:** Develop funding mechanisms.

**PROPOSAL REQUESTED:** The TRA requests comments from the parties on how funding for this support can be accomplished.

### **X. Schools and Libraries**

**A. ISSUE:** Determine if additional intrastate support for eligible schools and libraries is needed.



**PROPOSAL REQUESTED:** During the July 15, 1997, TRA agenda, the Directors adopted the FCC matrix for federal funding to schools and libraries. In addition to this federal discount, the state currently has ISDN, School Parent Telecommunications Service, in Classroom Computer Access Service and Distance Learning Video Transport Service discounts available to schools and libraries.

1. Do any parties believe that more discounts to schools and libraries should be offered in addition to the federal discount matrix and the four state discounted services?
2. Should additional discounts to Internet services be provided by the state?

**B. ISSUE:** Develop funding mechanisms if needed.

**PROPOSAL REQUESTED:** Cost studies need to be submitted on the current state discounted services to determine if, in fact, schools and libraries are receiving a subsidy. Additionally, any other state discounted services will need studies to determine subsidies. Once the subsidy amounts are known a fund must be established to support the discounts. The TRA requests comments from the parties on how funding for this support can be accomplished. Please be specific and provide your view on whether support for schools and libraries should come from the same source of revenues used to support other Universal Service items.

**C. ISSUE:** Address as necessary any school and library petitions regarding pre-discount price.

**PROPOSAL REQUESTED:** The FCC noted that if schools and libraries believe the lowest corresponding price offered to them is unfairly high or low, they may seek recourse from the state. What procedures do you believe could be put in place to ensure that schools and libraries are offered the lowest possible price. Also, if a school or library petitions the TRA regarding the price, what criteria should be used to determine if in fact the price is unreasonably high?

## **XI. Support For Health Care Providers**

**A. ISSUE:** Determine if additional intrastate support for eligible health care providers is needed.

**PROPOSAL REQUESTED:** The TRA requests comments from the parties on whether additional health care discounts are needed.

**B. ISSUE:** Develop needed funding mechanisms.

**PROPOSAL REQUESTED:** The TRA requests comments from the parties on how funding for this support can be accomplished.

### **XIII. Administration of Support Mechanisms**

**A. ISSUE:** Determine which companies qualify as non-rural carriers and are subject to 1/1/99 Universal Service support.

**PROPOSAL FOR COMMENT:** BellSouth and United Telephone Southeast are the only companies which the Staff has identified as non-rural carriers. Are there others?

**B. ISSUE:** Determine method for transition from current support to new support.

**PROPOSAL REQUESTED:** The new support mechanisms approved will be the determining factor of the impact on transition from old support to the new system. Since the fund administrator is responsible for maintaining the new fund, it may be appropriate to allow the administrator to design a system for the transition. Please provide your opinion on a transition process.

**C. ISSUE:** Determine the structure of the intrastate Universal Service fund

1. How will it be created?
2. Will it be consistent with or not consistent with the Federal fund?
3. Who will contribute to it?
4. How often will contributions be made?
5. What basis should be used for contributions?
6. Who is eligible to receive support?
7. How funds will be distributed?
8. How should the TRA ensure that the fund is non-discriminatory and competitively neutral?

**PROPOSAL REQUESTED:** The TRA requests comments from the parties on these specific issues regarding the structure of the intrastate Universal Service Fund.

**D. ISSUE:** Determine notification requirements regarding companies' certification of rural carrier status.

**PROPOSAL REQUESTED:** A carrier must notify the FCC and its' state Commission, that for purposes of Universal Service support determinations, it meets the definition of a rural carrier. Carriers should make such a notification each year prior to the beginning of the Universal Service Fund payout period for that year. What procedures can be put in place to ensure that rural carriers satisfy this requirement?

**E. ISSUE:** Determine need for public interest payphones and develop funding mechanisms, if required.

**PROPOSAL REQUESTED:** Please provide comments on what criteria you believe is necessary for determining the need for a public interest payphone. Funding for public interest payphones may come from various sources such as the Universal Service Fund or an additive or charge on payphone access lines. What type of funding mechanisms do you believe would be appropriate for funding of public interest payphones?

**F. ISSUE:** Determine if the TRA should administer the intrastate Universal Service Fund.

**PROPOSAL REQUESTED:** Please provide comments.

**G. ISSUE:** Appoint intrastate Universal Service Fund Administrator.

**PROPOSAL REQUESTED:** What criteria should be established to determine qualifications as fund administrator?

**H. ISSUE:** Determine if contributions to the Universal Service fund may be recovered by contributors, (i.e. passed on to end users).

**PROPOSAL REQUESTED:** The FCC adopted a contribution assessment methodology that is competitive neutral and easy to administer. Contributions will be assessed against end users telecommunication revenues, revenues derived from end users for telecommunications, and telecommunications services, including SLCs. Please provide comments.

#### **XIV. Other**

**A. ISSUE:** Would the use of task forces, advisory committees, technical conferences and settlement conferences in this proceeding be helpful?

**PROPOSAL REQUESTED:** Some parties have commented that these groups would be helpful. If you believe these groups would be beneficial, explain where these groups or meetings make sense.

**B. ISSUE:** Determine intrastate funding requirements for Tennessee Relay Center (TRC).

**PROPOSAL REQUESTED:** Currently, the intrastate costs of operating the TRC are divided between intraLATA and interLATA for the state. The intraLATA portion is funded by all LECs based on their proportionate share of intraLATA minutes of use and the interLATA portion is funded by all interexchange carriers based on their proportionate share of interLATA minutes of use. Options for funding the TRC could include the

current system, through the Universal Service Fund, or establishment of a separate fund. Which option do you believe would be best? The current fund is administered by BellSouth. Do you believe BellSouth should continue as administrator of the TRC fund?

**C. ISSUE:** Determine effect of BST stay on Universal Service.

**PROPOSAL REQUESTED:** If the court remands the case back to the TRA, then the price regulation audit will have to be re-done to conform with the courts ruling, which in turn would effect implicit subsidy calculations. If the court supports the TRA's decision, then revenues of certain services will be lowered, thus reducing any implicit subsidies that may exist. Please provide your comments.

**D. ISSUE:** Determine any needed changes to TRA rules, state laws, etc.

**PROPOSAL REQUESTED:** Provide any necessary changes to TRA rules and/or State Laws to make them conform with the Federal Law.

**E. ISSUE:** Determine date that Universal Service will be re-addressed.

**PROPOSAL FOR COMMENT:** The FCC is convening a Federal-State Joint Board to review the definition of Universal Service on or before January 1, 2001. The Staff would recommend that an intrastate Universal Service proceeding be held immediately following the Joint Board's decision. Please provide your comments.

**F. ISSUE:** Determine and implement service quality standards.

**PROPOSAL REQUESTED:** The FCC determined that states may impose service quality standards that are competitively neutral and further the goals of Universal Service. Consistent with these requirements, what service quality standards do you feel are necessary?

**G. ISSUE:** Are embedded cost studies appropriate to determine implicit subsidies?

**PROPOSAL FOR COMMENT:** Implicit subsidies are the support that currently exists for universal service elements. This current support is determined based on embedded costs, therefore, the Staff believes embedded costs are appropriate to determine implicit subsidies. Do you agree?


**H. ISSUE:** Determine method to calculate implicit subsidies (i.e. by element, group or category).

**PROPOSAL FOR COMMENT:** The Staff believes that implicit subsidies should be calculated in the most efficient and least burdensome manner. To facilitate this, the Staff prefers that implicit subsidies be calculated by service groups or categories. Please provide your comments.

**I. ISSUE:** Determine effect of contracts between LECs (i.e. EAS, toll, private line, etc.) on subsidies.

**PROPOSAL REQUESTED:** Please provide comments.

Respectfully requested,

  
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Director, Sara Kyle, as Hearing Officer

ATTEST:

  
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Executive Secretary

## **PROPOSED SCHEDULE FOR UNIVERSAL SERVICE**

### **PHASE 1 - Non Specific Cost Issues**

**Docket No. 97-00888**

July 28, 1997	Pre-hearing Conference. Distribute Issues for Comments and Proposed Schedule
August 1, 1997	Parties file comments regarding the choice of Cost Model
August 5, 1997	Status conference with Staff and Participants - 1:30 p.m. Questions regarding Request for Comments
August 5, 1997	TRA Conference - Directors vote on what cost model to use for Universal Service and inform the FCC by August 15, 1997
August 21, 1997	Comments due on Request for Comments
September 2, 1997	Reply comments due in response to comments filed
September 10, 1997	Status / Settlement Conference
September 16, 1997	Conference Agenda - Directors rule on the issues to be heard at hearing.
September 26, 1997	Pre-hearing if needed - tentative
October 17, 1997	Direct testimony for litigated issues
October 24, 1997	Rebuttal testimony
November 17-21, 1997	Hearing on contested issues
December 16, 1997	TRA decision on Phase 1 issues

## **PROPOSED SCHEDULE FOR UNIVERSAL SERVICE**

### **PHASE 2**

#### **Docket No. 97-00888**

January 13, 1998	Pre-hearing Conference Cost Methodology & Issues Defined Schedule to completion established
February 12, 1998	Telcos provide cost and revenue data by category
February 23, 1998	Discovery request due
March 20, 1998	Discovery request due
April 3, 1998	Direct testimony due
April 13, 1998	Rebuttal testimony due
April 27-May 1, 1998	Hearings
May 19, 1998	TRA decisions on remaining Universal Service issues